Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1585

UNITED STATES OF AMERICA, PETITIONER,

v.

RICHARD RUSSELL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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* The opinion of the Ninth Circuit is printed at page 12 of the Petition for a Writ of Certiorari.

Relevant Docket Entries

Date	Proceedings
Feb. 25, 1970	Filed Indictment.
Mar. 6, 1970	Enter Arraignment and Plea, not guilty, Counts II, III and IV, defendant Russell.
Mar. 6, 1970	Enter order setting trial for June 22, 1970, 9:30 A.M.
	. . . .
June 22, 1970	Enter RECORD OF TRIAL BY JURY (1st day). Wilford Mayrand, Reporter. Exhibits. O. J. Humphrey present as counsel for defendant Russell.
June 22, 1970	Enter order for bench warrant defendant John Connolly, for failure to appear for trial. Issued Warrant.
June 23, 1970	ENTER RECORD OF TRIAL BY JURY (2nd day) as to defendants Patrick Connolly and Richard Russell.
June 24, 1970	ENTER RECORD OF TRIAL BY JURY (3rd day) Defendants P. Connolly and Russell.
June 24, 1970	Filed Verdict of Guilty as to Counts II, III and IV as to Defendant Russell.
June 24, 1970	Filed verdict of Guilty as to Counts I to V inc. as to Defendant Patrick Connolly.
	. . .
June 29, 1970	Filed motion for new trial, defendant Russell and memorandum.
	. . .
July 2, 1970	Sentence: Richard Russell confined for TWO YEARS on Count II, suspended on condition that Defendant serve SIX MONTHS and probation for Three years. Same sentence on Counts III and IV, sen-

	tence on each of Counts III and IV to run Concurrent on Count II.
July 2, 1970	Filed and Enter Judgment and Commitment as to Defendant RUSSELL.
July 2, 1970	Enter Order Denying Defendant Russell's Motion for new trial.
July 10, 1970	Filed Defendant Russell's Motion for Leave to Appeal IFP.
July 10, 1970	Filed Affidavit and Order allowing defendant Russell to appeal IFP.
July 10, 1970	Filed Defendant Russell's Notice of Appeal.

DIRECT EXAMINATION

By Mr. PIDWELL:

Q. Agent Shapiro, what is your occupation?

A. I am a special agent for the Bureau of Narcotics and Dangerous Drugs.

Q. And how long have you been so employed?

A. Approximately one and one-half years.

Q. Do you have any prior law enforcement experience?

A. Yes, sir.

Q. And what was that?

A. I was employed by the California Bureau of Narcotics Enforcement for approximately one and one-quarter years.

Q. Now as an agent for the Bureau of Narcotics and Dangerous Drugs, will you describe generally your duties with the Bureau?

A. My activities involve undercover enforcement, where I usually play the role of a narcotics or drugs violator, who attempts to locate other drug violators.

Q. Now I direct your attention to December 7, 1969; were you then acting in an undercover capacity?

A. Yes, sir, I was.

Q. And at that time did you meet the defendants in this action?

A. Yes, sir.

Q. Would you point out to the jury, and indicate to them the names of the defendants?

A. Mr. Richard Russell is the one over at the table with the yellow shirt and the tie; and Mr. Patrick Connolly, Seated to the rear is wearing the green and orange shirt.

Q. Now where did you meet the defendants is this action?

A. I met them at a residence on Whidbey Island, Route 1, Box 128.

Q. Did you later find out whose residence this was?

A. Yes, I later determined this to be the residence where Richard Russell was living.

Q. And about what time of the day did you meet them?

A. Approximately 6:00 p.m.

Q. Now under what circumstances did you meet them; will you describe the introduction?

A. I went to the residence with an individual by the name

of Allen, and at the residence I was introduced to John Connolly, Patrick Connolly, and Richard Russell.

Q. Did you indicate to them your undercover story?

A. Yes, sir.

Q. And what did you tell them?

A. I told Richard Russell, and John and Pat Connolly that I represented an organization interested in controlling the manufacture of methamphetamine, that I represented the organization in the Northwest area, and I wanted to meet with the people who were manufacturing the methamphetamine, and I wanted to obtain methamphetamine from them. For this I would provide them with one of the chemicals used in the manufacture of methamphetamine, and also, I would be willing to purchase the methamphetamine that they manufactured.

Q. What was the chemical that you would furnish them?

A. The chemical was known as Phenyl-2-Propanone.

Q. Now who was present in the house on that occasion?

A. Myself, this individual by the name of Allen, John Connolly, Patrick Connolly, Richard Russell, and there were two females, one I believe was Cheryl Blakely, and there was another male individual by the name of Clay.

Q. Now when you told them your cover story, what did anyone say?

MR. HUMPHREY: Objection, it would be hearsay, your Honor.

THE COURT: It may be an admission against interest.

MR. PINNELL: It is part of the res gestae of the transaction.

THE COURT: Well, you haven't identified, the time, the place, the circumstances.

Q. (By Mr. Pinnell) When you arrived at the residence, who was at the residence?

THE COURT: Well, he has already stated that.

MR. PINNELL: Then I asked him, after telling them his cover story, did anyone say anything.

THE COURT: Well he can answer that yes or no.

A. Yes, sir.

Q. Who said what?

A. Patrick Connolly——

MR. HUMPHREY: Your Honor, I will object again; we don't know what we are getting into.

THE COURT: Well that is not a good ground for an objection, not knowing what you are getting into. He has asked the witness to testify, Counsel, as to who said what, and he said that Patrick Connolly said something, and he is the defendant here; so I am going to permit him to answer. What did he say?

Q. (By Mr. Pinnell) What did Patrick Connolly say?

A. He stated to me that he had been manufacturing methamphetamine since May of 1969, that since May, up to that time, he had manufactured approximately three pounds of methamphetamine, also that he had learned to manufacture this from other individuals in the Portland, Oregon area.

Q. At that time did anything happen?

A. I stated to Patrick Connolly that I would be willing to provide him with Phenyl-2-Propanone for one-half of the methamphetamine that he manufactured. I also stated to him that before I would provide him with any Phenyl-2-Propanone, I wanted a sample of the methamphetamine that he was manufacturing, and I also wanted to watch his operation. At that time John Connolly handed me a small plastic bag containing a white powder. John Connolly stated to me "This is the last of the last batch that we made."

Q. Now do you recall where John Connolly took that package from? Or did he just hand it to you?

A. He just handed it to me.

Q. Was he carrying it on his person?

MR. HUMPHREY: I object, your Honor.

THE COURT: Well, I will sustain on that. That would be speculation.

Q. (By Mr. Pinnell) At that time, what if anything did you do?

A. I asked Pat Connolly if I could see his laboratory. He agreed to me, and Pat Connolly and I left the residence, entered my government vehicle, and proceeded to drive to a wooded residence located on Lot 30, Deer Lake Haven, on Whidbey Island. There was no house number or street name at this location.

Q. Whose residence was that?

A. This was the residence of Patrick Connolly.

Q. And what happened after you arrived there?

A. At the residence, Patrick Connolly showed me several items of laboratory equipment, and several chemicals.

Q. Where was this laboratory equipment located in Patrick Connolly's house?

A. It was located in the living room and kitchen area of the house.

Q. After you saw the laboratory equipment, what if anything did you do?

A. Patrick Connolly and I then left the residence and returned to the residence located at Route 1, Box 128. At that location I agreed to meet with Richard Russell and Pat Connolly the following day.

Q. Did they ask you to come there that following day?

A. Yes, sir.

Q. About what time of day was that?

A. It was then about 7:00 p.m.

Q. And what did you do?

A. At that time I left the residence, met with my surveilling agent, and returned to Seattle.

Q. Now when you were at Patrick Connolly's house, did you see any empty bottles?

A. Yes, sir.

Q. What did you observe?

A. There was one empty bottle labeled Phenyl-2-Propanone.

Q. December 9th.

A. Yes, sir.

Q. And in doing that, did you go to Whidbey Island?

A. Yes, sir.

Q. When did you first arrive on Whidbey Island?

A. At approximately 3:30 p.m.

Q. And what did you do after your arrival there?

A. I went to Mr. Connolly's residence, but nobody was home. And I went to Mr. Russell's residence, he was not there, but there was a female there at the residence by the name of Teddy. I remained at the residence for awhile and then left. I returned again to Mr. Russell's residence at approximately 5:40 p.m. Approximately fifteen minutes later Mr. Russell, Pat Connolly, Cheryl Blakely, and an individual by the name of Pat Hanson arrived. We re-

mained at that residence for a short time, and then Pat Connolly, Richard Russell, Pat Hanson and Cheryl Blakely left the residence, I followed them, and——

Q. Approximately what time was this?

A. This was approximately 6:00 p.m.

Q. Then how long did you remain at the Russell residence with these other four individuals?

A. Approximately five or ten minutes.

Q. Then what happened?

A. I followed them down to Mr. Connolly's residence, we all entered the residence. Shortly thereafter, Cheryl Blakely and Pat Hanson left the residence.

Q. At approximately 7:00 p.m. did anything unusual happen?

A. Yes, sir.

Q. What happened?

A. Pat Connolly proceeded to measure out lengths of aluminum foil from a roll of aluminum foil.

Q. About how long were they?

A. He was measuring out lengths approximately the width of his arms. He then cut these up into smaller pieces, and then he and Richard Russell cut these up into smaller pieces, and then he and Richard Russell placed the smaller pieces of aluminum foil into a 4,000 millimeter flask.

Q. Could you tell us approximately how large a 4,000 millimeter flask is?

THE COURT: Show them with your hands.

A. It would be about that tall.

Q. About a foot high?

A. It would be less than a foot; it is about six inches at the base, and tapering to about two inches at the top.

Q. And what did they do with the aluminum foil?

A. This was placed into the flask.

Q. Who placed it into the flask?

A. Both Richard Russell and Pat Connolly.

Q. Where were they at this time?

A. At this time, Richard Russell, Pat Connolly and myself were in the living room of Pat Connolly's residence.

Q. Would you then tell the jury what if anything happened?

A. Yes; Pat Connolly took the flask into the bathroom,

I followed him to the bathroom, Mr. Connolly then added some water to the flask from the shower, he then drained the water out, and he then proceeded to add a number of chemicals, he added a quantity of isopropyl alcohol, methylamine, a small quanity of lye, a quantity of mercuric chloride, and then he asked me for the Phenyl-2-Propanone. I then gave Mr. Connolly, I gave him a bottle, one hundred grams, of Phenyl-2-Propanone.

Q. Then what did you do?

A. He added the contents of the bottle of Phenyl-2-Propanone into the flask, he placed the stopper on this flask and taped the stopper to the flask and shook the flask gently and placed it in the shower. To the stopper was attached a rubber hose and he inserted the opposite end into the drain of the shower.

Q. Could you tell why he put it into the drain of the shower?

A. When all of the chemicals were added to the flask, a chemical reaction occurred and very strong fumes began to emanate, and the hose leading down into the drain of the shower took off some of the fumes.

Q. Then what happened?

A. Periodically during the next two hours, or so, Connolly would feel the outside of the flask with his hand, and at times he would wrap it with wet towels, and other times he would place the electric heater near the flask.

At approximately 8:30 p.m. I left the residence for a short time. I met with the surveilling agent and advised him what was happening in the residence. I then purchased some soft drinks and some pastry which I brought back to the residence, and I remained in the residence, after the reaction took place, for approximately two hours.

Q. Do you have any idea of the time sequence here?

A. It was approximately, I would say, 7:30, or thereabouts, all the chemicals were added to the flask, and the chemical reaction was started in the flask, the bubbling contents then changed to a gray murky color. This went on for about two hours, approximately 9:30, or thereabouts.

Q. You had already gone out to the store at that time and had come back?

A. And had returned, yes. After the reaction had stopped in the flask, Mr. Connolly then took four glass

bottles, took four funnels, and in the funnels he placed paper towels, in each of the four funnels, and then he placed a funnel into each of the four bottles, and poured the contents of the flask into each of the bottles. In the bottom of the bottles collected a relatively clear liquid.

Q. What did he do with that liquid?

A. He took the liquid that collected in one bottle, he poured this into a pyrex baking dish. To this he added several drops of acid, he stirred this around and tested it a P Hydrian test paper.

Q. And what is P Hydrian test paper?

A. These are chemically-treated strips of paper that indicate by different colors the strength of an acid or alkali.

Q. And then what happened?

A. After the color changed to the color that Mr. Connolly desired, he placed this pyrex baking dish with the liquid in it on the electric hotplace, turned on the hotplate, and then took a woman's hair dryer and blew hot air over the liquid. After awhile the liquid dried to a white crystaline powder, which Mr. Connolly then scraped off the baking dish, put it into a plastic bag and handed it to me. This was approximately 11:40 a.m. on December 10th.

Q. The following day?

A. Yes.

Q. At that time did you note the approximate weight of the material?

A. Yes, I weighed the bag and its contents on a small balance scale, and it weighed approximately eleven and a half grams.

A. Mr. Russell scraped the white powder that had dried in the baking dish four times, Mr. Connolly did it once.

Q. Mr. Connolly was drying the material, and this was at the same time that Mr. Russell was scraping the pyrex dishes?

A. Yes.

Q. And what then happened?

A. Mr. Connolly stated to me that I could have the rest of that batch, at which time Mr. Russell stated, "After I get my half."

Q. Did you say anything about that?

A. No, I didn't.

Q. When then happened?

A. Mr. Russell had collected the powder into plastic bags; there were three small plastic bags. I was at that time given one of these bags. I then offered——

Q. Who gave you the bag?

A. Mr. Russell. I then offered Mr. Russell $75.00 to purchase the remainder, the remaining two plastic bags of the powder.

Q. What did Mr. Russell say?

A. Mr. Russell stated that he already had one-quarter sold for $65.00, and that he would have to think about selling me the remainder.

* * * * *

Q. Is that the same exhibit that was given to you by Mr. Russell?

A. Yes, sir, it is.

Q. What did you do with it after you obtained it on that morning?

A. I kept it in my personal custody.

Q. Then what did you do with it?

A. I secured it at the Bureau of Narcotics and Dangerous Drugs office at Seattle, Washington, and on December 12, I mailed it via registered mail to the San Francisco Regional Lab Office of the Bureau of Narcotics and Dangerous Drugs.

Q. Did you ever take the weight of that exhibit?

A. Yes, sir, I did.

Q. What was the approximate weight?

A. About 7.4 grams.

Q. Now returning then to that morning; after you obtained Exhibit Number 3 for identification, what if anything occurred?

A. Mr. Connolly, Mr. Russell and I then left Mr. Connolly's residence, we entered my government vehicle and proceeded to drive towards Mr. Russell's residence.

Q. Did anything happen in the car?

A. While driving toward Mr. Russell's residence, Mr. Russell stated to me that he would sell me the larger plastic bag he had for $60.00. I agreed to buy them from him at that price.

* * * * *

to January 7, 1970; on that day did you have occasion to see any of the defendants in this action?

A. Yes, I did.

Q. Where was that?

A. That was at the residence of Patrick Connolly.

Q. What time did you arrive there?

A. Approximately 1:15 p.m.

Q. When you entered the premises, what did you observe?

A. I was admitted to the premises by a female by the name of Teddy, and I observed John Connolly sleeping in the living room; Cheryl Blakely led me into the bedroom where I met with Patrick Connolly.

Q. Then what happened?

A. I asked Mr. Connolly if he was still interested in our business arrangement. Mr. Connolly stated that he was, however he stated that he had since acquired two bottles of Phenyl-2-Propanone, and would not be finished with that until approximately Friday of that week, which would have been Jannary 9th, 1970.

Q. Did anything further occur at that time?

A. I asked Mr. Connolly if he had any methamphetamines, he stated he did, and he then instructed Cheryl Blakely to get a bottle out of the refrigerator. Cheryl Blakely left the bedroom, and returned a few minutes later and handed me a brown bottle that was cold to the touch. I examined the contents of the bottle, which was a white powder. Mr. Connolly asked me if I wanted any. I stated, okay, and Cheryl Blakely then placed a small quantity of this powder into a plastic bag and handed it to me.

• • • • •

Q. Now Agent Shapiro, I will ask you whether on January 10, 1970 you had occasion to return to the Connolly residence?

A. Yes, I did.

Q. What was the purpose of your returning to the Connolly residence on that date?

A. I went to the residence to arrest Patrick and John Connolly, and to serve a search warrant at John and Pat Connolly's residence.

• • • • •

THE WITNESS: This is an empty five hundred gram bottle of Phenyl-2-Propanone.

(Plaintiff's Exhibit Number 37 marked for identification.)

MR. PENNELL: Is that the same bottle that you brought over when you were there, Mr. Shapiro?

THE WITNESS: No, sir.

* * * * *

THE WITNESS: This is a brown bottle, one hundred grams of Phenyl-2-Propanone.

(Plaintiff's Exhibit Number 40 marked for identification.)

MR. PENNELL: Excuse me, is that the same bottle that you brought over that one time?

THE WITNESS: Yes, sir, that is; the right-hand corner of the label was crimped down by me at the time I brought it over, as you will notice here.

* * * * *

THE WITNESS: This next one is a brown bottle labeled Phenyl-2-Propanone, found by me in a cabinet in the living room.

MR. PENNELL: Mr. Shapiro, is that the bottle that you took over when you went over there?

THE WITNESS: No, sir.

* * * * *

A. Yes, sir, there was one large bottle, I believe, that was labeled 1-Proponal, and there was another bottle I believe labeled 2-Proponal; these I believe are a form of alcohol.

Q. That is Proponal, not Propanone, they are two different things?

A. That is correct.

Q. And a person cannot get the Propanone from a supply house unless he has a manufacturer's license, can he?

A. No, sir, he can't purchase Phenyl-2-Propanone at a chemical supply house——

Q. Without a license?

A. That is correct.

Q. The same stuff that you gave him in this small bottle?

A. That is correct.

* * * * *

Q. Did you tear up any foil and put it in the flask?

A. I put in several pieces of tin foil that had fallen on the floor; I did not tear up any foil.

Q. You were right in the immediate area while they were tearing up the foil and putting it in the flask, is that correct?

A. That is correct.

Q. Did you put the alcohol in the flask?

A. No, sir.

Q. Then after the alcohol, what was the—they put in the foil and they put in the alcohol; what was the next ingredient?

A. Initially the aluminum foil was put it, then it was dampened with water from the shower—I don't recall the exact order, but Methylamine, isopropyl alcohol, lye, and mercuric chloride, and Phenyl-2-Propanone were added to the flask. The Phenyl-2-Propanone was the last item added to the flask.

Q. Did you assist in any way in mixing the contents, or adding any of the items of the contents to the flask?

A. No, sir.

Q. But you were right there in the immediate area and watched them?

A. That is correct.

Q. Did you talk to them during this process?

A. Yes, sir.

Q. Did you tell them what to do?

A. No, sir.

* * * * *

CROSS EXAMINATION

By MR. PRINCE:

Q. Good morning, Mr. Shapiro. I do not want to repeat the questions asked by Mr. Butler, but I do want to get this straight; the drug that you supplied, or the chemical that you supplied to Connolly and Russell was one Phenyl-2-Propanone?

A. This was a 100-gram bottle of Phenyl-2-Propanone.

Q. And it is also your statement that the public can buy this from a drug firm?

A. It is sold at chemical supply houses.

Q. For instance, could I go down to a drug supply and buy this?

A. If they would sell it to you, yes.

Q. And why do you say, if they would sell it to me?

A. There are a number of drug firms that have voluntarily taken it off the market.

Q. Why is this?

A. This was done at the request of our Bureau, to help control the illicit manufacture of drugs.

Q. Well is it a fair statement that this drug may have been hard to obtain on or about December 9th and 10th of 1969?

A. That is correct.

Q. This was your role in the production then, to supply the defendants with this chemical?

A. Yes, sir, I did supply them with the chemical.

Q. Is that why you went to their residences on December 6th and December 7, 1969?

A. Yes, sir.

Q. Why didn't you sell it to them on December 7, 1969?

A. My intention was not to sell it to them, my intention was to locate their clandestine laboratory where drugs were being manufactured.

Q. When did you locate laboratory?

A. The first time I saw the entire laboratory was on the evening of December 9, 1969.

Q. Did you tell them at any time on the 7th of December that you could obtain the Propanone?

A. I told them that I could obtain and supply them with Phenyl-2-Propanone.

Q. On December 7th?

A. That is correct.

Q. Did you supply this to them on December 8th?

A. No, sir.

Q. Why not?

A. They were not ready to show me their laboratory, or produce any drugs on that date.

Q. Was a sale or deal discussed, concerning the transfer of the drugs?

A. On December 7th the conversation involved my offering to supply these individuals, Richard Russell, Patrick Connelly and John Connolly, with Phenyl-2-Propanone in return for one-half of their production of methamphetamine.

Q. On December 9th, do you recall seeing this drug on or

about their premises? I am referring to one hundred grams of Phenyl-2-Propanone.

A. I saw this on the premises; I brought it on their premises with me on December 9, 1969.

Q. Did you see any other bottles containing this chemical or drug, on or about December 9, 1969?

A. No, sir.

Q. Did they indicate to you that they had this drug or chemical on their premises on December 9, 1969?

A. No, sir.

Q. Is this drug necessary for the manufacture of methamphetamines?

A. For this method of production of methamphetamine, yes, sir, it is.

Q. And when you say for this method of production, you mean as it was so set up on the premises, the Connolly residence, on December 9th?

A. That is correct.

Q. To the best of your knowledge was there a production of this methamphetamine on December 8, 1969?

A. No, sir.

Q. On December 7, 1969?

A. No, sir.

Q. Do you know why?

A. No, sir.

Q. Did they discuss with you that there was no Propanone, that they had no Propanone?

A. This was probably discussed, yes.

Q. It was probably discussed that they didn't have any?

A. Yes, that is right.

Q. So with all the laboratory equipment and chemicals that have been admitted into evidence, without this one chemical or drug this production could not have been successful, or would not have produced the methamphetamine?

A. That is correct, this is a prime chemical used in the manufacture.

* * * * *

Q. I am not going to belabor the issue, and actually it may be my confusion, certainly it is somewhat complicated, but there was only one reaction which began on the night of the 9th, and was completed sometime during the morning of the 10th, is that correct?

A. That is correct.

Q. And when did you receive your final supply of methamphetamine?

A. I received my last sample of methamphetamine from Mr. Russell at approximately 11:45 a.m., on the morning of the 10th.

Q. Who had the balance of the methamphetamine after the reaction? Do you understand my question?

A. I think I do.

Q. Then you—would you answer?

A. Mr. Russell.

Q. Why did Mr. Russell have it?

A. Based on my conversations with Mr. Connolly and Mr. Russell earlier, it was my impression that Mr. Connolly——

Mr. Burton: Your Honor, I object to his question on the basis that it is calling for the witness' impression——

The Court: Well I think that is a valid objection; however, it is an unusual situation. Well, all right, I will sustain your objection to his question; it calls for a conclusion, rather than what they said.

The question was, why did Mr. Russell keep the balance of the methamphetamine.

Q. (By Mr. Prince) Was Mr. Russell the seller?

A. Yes, sir.

Q. He sold methamphetamine?

A. Yes, sir.

Q. Did you purchase it all from Mr. Russell, or did he have a quantity left?

A. I purchased part of what he had left.

Q. What happened to the remainder?

A. He kept it with him.

. . . . . .

Q. Now you have been in the courtroom and you heard Mr. Shapiro testify as to the process that he observed on December 9th and 10th, where the chemicals were put together to form methamphetamine?

A. Yes, sir.

Q. And in your recent testimony where you were talking about the most common manner of the production of methamphetamine——

A. Yes.

Q. The operation that Mr. Shapiro saw was this most common method of manufacturing methamphetamines, was it not?

A. Yes.

Q. And in this method that Mr. Shapiro observed, Propanone is a necessary ingredient, is it not?

A. I don't quite understand; Phenyl-2-Propanone is a necessary ingredient?

Q. Yes.

A. Yes, sir, it is.

Q. And you can have everything else, and if you don't have the Propanone, you cannot manufacture methamphetamines?

A. No, without the Phenyl-2-Propanone you could not get the reaction to get methamphetamine.

Q. Absent the Propanone, you put everything else in there as described by Mr. Shapiro, what would you get?

A. Not a great deal of any kind of product, you see, because the product depends upon the reaction of the Phenyl-2-Propanone, this is the whole idea. The other things that are there are simply for solvents, or for the generation of hydrogen for condensation.

Now this is the entrapment instruction, and it is quite simple.

The defendants assert that they were victims of entrapment as to the crime charged in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, he is a victim of entrapment, and the law as a matter of policy forbids his conviction in such cases.

On the other hand, where a person already has the willingness and the readiness to break the law, the mere fact that the government agent provides what appears to be a favorable opportunity is not entrapment.

If then the jury should find beyond a reasonable doubt from the evidence in the case that before anything at all occurred respecting the alleged offense involved in this case, the defendants were ready and willing to commit the crimes such as charged in the indictment, whenever opportunity was afforded and that the government officer did no

more than offer the opportunity, then the jury should find that the defendant is not a victim of entrapment.

On the other hand, if the evidence in the case should leave the jury with a reasonable doubt whether the defendant had the previous intent or purpose to commit the offense of the character here charged, and did so only because he was induced or persuaded by some officer or agent of the government, then the jury should acquit him, or them, I should say.

SUPREME COURT OF THE UNITED STATES

No. 71-1585, ...

UNITED STATES,
Petitioner,

v.

RICHARD RUSSELL

ORDER ALLOWING CERTIORARI. Filed ..... October 13, 1972
The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth ..... Circuit is granted.

☆ U.S. Government Printing Office: 1972—488-233/294